

The 28th January, 1982.

No. 9 (1) 82-6Lab. 413—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Bharat Carpets Ltd., Amar Nagar, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 98, 99 and 100 of 1981.

Between

SARVSHRI BHOLA NATH YADAV, HARDEY NARAYAN, MANEHI RAM, WORKMEN
AND THE RESPONDENT MANAGEMENT OF M/S. BHARAT CARPETS LTD., AMAR
NAGAR, FARIDABAD.

Present :—

Shri Mohit Kumar Bhandari, for the workmen,
Shri S.K. Sharma, for the respondent management.

AWARD

These references No. 98, 99, 100 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID.FD.91-80/37599, dated 17th July, 1980, ID.FD.91-80/37587, dated 17th July, 1980 and ID.FD.91-80/37593, dated 17th July, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sarvshri Bhola Nath Yadav, Hardey Narayan, Manehi Ram, workmen and the respondent management of M/s. Bharat Carpets Ltd., Amar Nagar, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Bhola Nath Yadav, Hardey Narayan, Manehi Ram was justified and in order? If not, to what relief is he entitled?

Notices were sent to the parties, after receiving these references and the parties put their appearance and filed their pleadings in the Court. The case of the workmen according to their claim statement is that the workmen were appointed and terminated as under —

Serial No.	Name of the workman	Date of appointment	Post held	Wages	Date of termination
				Rs.	
1	Shri Bhola Nath Yadav	.. 1-10-75	Twisting operator	305	
2	Shri Hardey Narain	.. 2-1-70	Ditto	326	
3	Shri Manehi Ram	.. 12-2-70	Ditto	326	

The workmen were the active members of the union called Bharat Carpets Karamchhari Union Regd. and this act was an straw in the eye of the management. The respondent management warned the active members of the union either leave the union or should be ready for dire consequences. The respondent had the conspiracy and in pursuance of this they stopped the gate of the workmen on 28th July, 1979. The workmen stay at the gate even on the next date and sent the complaint in this respect through registered post copy to the Deputy Labour Commissioner, Faridabad. The workman waited for the reply upto 16th August, 1979, but received no reply. The workmen were told orally that their names have been struck off from rolls. After this information the workman served the demand notices on 17th August, 1979. The Deputy Labour Commissioner initiated the conciliation proceeding in which the management took the plea that the services of workmen were not terminated by the respondent. The workmen reported for duty on 1st September, 1979, but were refused entry at the gate. Then the workmen again complaint the Deputy Labour Commissioner on

14th September, 1979 with a copy to the respondent management. The Deputy Labour Commissioner directed the Labour Inspector to enquire into the matter. The Labour Inspector took the workmen to the factory on 3rd October, 1979 on which the respondent told them that they will be taken from the next date. When the workmen reached on the next date for joining the duties, the respondent made a arrangement of police and got them arrested from inside the factory. The workmen were bailed out on the next date and when they come on 6th October, 1979 to join the duties they were served with suspension orders. The charge-sheets were given to the workmen for which the reply was given and the respondent constituted the domestic enquiry against the workmen and place of enquiry was fixed at Delhi to harass the workmen but it was changed on the objections of the workmen at Faridabad mill premises. The workmen demanded certain facilities on the basis of natural justice, but they were denied. The enquiry was started on 10th November 1979 with a discriminatory conduct of the enquiry officer. The enquiry officer did not record the proceedings in a fair manner which was protested by the workmen. The workmen were not allowed to be represented by a representative of their choice. On second sitting of the enquiry on 21st November, 1979 the proceeding started in a fair and cool atmosphere, inspite of the absence of representative of the workmen, the workmen cross examined the witnesses of the respondent management which were fairly recorded and the trend of the enquiry was in favour of the workmen. But the injurious behaviour of the respondent representative, spoiled the whole show and he torned out the proceedings of the enquiry officer. The objection was not sustained by the enquiry officer and the workmen were forced to sign the documents on that day. The copies of the findings were not furnished to the workmen in spite of their demand. No show cause notice were served to the workmen before their dismissal. The enquiry was not fair and proper and so the dismissal order were not justified and the workmen may reinstated with full back wages and continuity of service.

According to the written statement the case of the respondent is that in the month of June, 1979, the workmen of few department resorted to go slow tactics and started slowing down the production deliberately and this movement gathered strength day by day and the workmen along with others also thought to take part in the go slow movement. The workman namely Sarvshri Mavehi, Raghbir Chand, Amar Nath, Hridaya Narain and Mukhtiar Yadav assaulted a co-workmen namely Shri Lakh Ram in the department itself on 28th July, 1979 at about 8-25 A.M. The concerned workmen along with other five workmen committed gross and serious acts of misconduct and created riotous and disorderly behaviour in the mill during the working hours. They also assaulted the Chief Security Officer of the factory while running away from the factory. After this incident they never entered the mill and started remaining absent in an un-authorised manner. The charge-sheet dated 5th August, 1979 was sent to the workmen containing the charges of assault, disorderly and riotous behaviour and beating their co-worker on 28th July, 1979, and remaining absent in unauthorised manner. As the workmen were absent from the factory they were sent the chargesheet through registered A.D. cover at their present and permanent address but the chargesheet were received back un-delivered. The respondent got published the language of the chargesheet issued to the workman involved in the incident. It was published in local Hindi weekly SHERE HARYANA in its addition from 2nd September, 1979 to 10th September, 1979 and intimation of enquiry was also got published in the same news paper, besides sending the letters of enquiry intimation by registered post. The next date of enquiry was fixed for 20th September, 1979 at Kumar Holiday Inn, Lajpat Nagar, New Delhi, but no body turned up, nor any application was moved on their behalf. The enquiry officer could have proceed *ex parte* in the absence of the workman, but gave another opportunity to the concerned workmen and fixed 15th October, 1979 as next day of enquiry. Intimation was sent through registered post to the workmen beside publication in the local Hindi weekly the SHERE HARYANA in its addition dated 23rd September, 1979 to 30th September, 1979, but on that day of enquiry, the management received the letters from these workmen for the request to change the place of enquiry from Delhi to Faridabad and on that request the enquiry venue was changed from Delhi to Faridabad mill premises and the enquiry was fixed on 10th November, 1979 and the letters to this effect were also sent to the workmen through registered post. On 10th November, 1979 the proceedings on enquiry was started in the presence of the workmen and next date was fixed for enquiry proceedings for 21st November, 1979. On that day of enquiry the workmen demanded that they should be allowed to be represented by Shri Hari Lal, President of the union or Shri Banwari Lal, Secretary of the union. The enquiry officer asked the workmen to call any co-workmen within the factory premises and he can not allow out-sider to represent them according to the certified standing orders of the company. Moreover these two workmen are the dismissed employees of the respondent company because the outsiders are not supposed to follow the internal discipline of the company. On this the workmen walked out of the enquiry on the condition until they were allowed to be represented by the outsider they would not participate in the enquiry. The enquiry officer was left with no alternative except to proceed *ex parte* which he did on 21st November, 1979. The enquiry officer recorded the statements of managements witnesses and admitted the other documentary evidence produced before him. The enquiry officer submitted his report on 15th February, 1980, as his findings on the charges against these workmen and found them guilty. The respondent management examined the report and findings of the enquiry officer and according to the report as the workmen were guilty of serious and grave acts of misconduct deserving dismissal, so were dismissed on 26th February, 1980 and the copies of the orders were sent through registered post. The respondent have conducted the fair and proper domestic enquiry against these workmen according to the principles of natural justice. So the references may be rejected.

On the pleadings of the parties, the following issues were framed :—

1. Whether the fair and proper enquiry was held by the respondent management ? If so, to what effect ? OPM.

2. Whether the termination of services of services of the workmen is proper justified and in order ?
If not, to what relief are they entitled ?

At the time of framing of issues both the parties requested to consolidate these references No. 98,99 and 100 of 1981 of Sarvshri Bhola Nath Yadav, Hardey Narayan, Manchi Ram as all the references are of the same nature and against the same management. So my predecessors exceeded the request of the parties and consolidated these references and ordered that the evidence shall be recorded in reference No. 98 of 1981 of Shri Bhola Nath Yadav and shall be read in all references. My issuewise findings are as under :—

Issue No. 1 :—

The representative of the respondent argued on this issue that these workmen were employed by the respondent and they filled the form for the employment which are Ex. M-1. There were two unions in the factory and the one union was in favour of the go-slow tactics for law production and the other was against the same, in the month of June, 1979. These workmen started go slow tactics to slow down the production deliberately and on 28th July, 1979 these workmen assaulted Shri Lekh Ram the co-workmen and give him serious injuries and run away from the factory and when they were going out of the factory they also given the injuries to the Security Officer. Shri Om Parkash, Shift Incharge made a complaint against these workmen, which is Ex. M-2 and the Security Officer made a complaint against these workmen which is Ex. M-3 on which it was recommended by the Chief Security Officer which is Ex. M-4. On these complaints the co-workman Shri Lekh Ram was sent to the Police and police lodged the FIR against these workman which is Ex. M-5 and Shri Lekh Ram was medically examined and the copy of the medical report is Ex. M-6. After this report to the police these workmen stopped coming in the factory. The respondent sent the letters to these workmen for their absence which is Ex. M-7 which was sent through registered post through Ex. M-7/1 and postal receipt of which is Ex. M-7/2. The letters were received back,—vide Ex. M-7/3 and M-7/4. After receiving the letters un-delivered, the charge-sheet Ex. M-8 was sent to the workmen through registered A.D. which is Ex. M-8/1 and postal receipts is Ex. M-8/2. The same were received back,—vide Ex. M-8/3 and Ex. M-8/4. After receiving these letters back un-delivered the enquiry officer was appointed,—vide Ex. M-9 and the same were sent through registered A.D. The postal receipt is Ex. M-9/1. But it was also received back,—vide Ex. M-9/2 on which the postal authority have written that the person concerned had refused to except the same. After that the workman came before the Deputy Labour Commissioner, Faridabad and there they were given the copies of the charge-sheet and for the appointment of the enquiry officer. The workmen signed these letters. The respondent published the information of the enquiry and the chargesheet through the news paper Shere Haryana which is Ex. M-10. The enquiry officer started his enquiry at Kumar Holiday in Lajpat Nagar, New Delhi. The charges against these workmen were of assault, disorderly and roiteous behaviour and beating his co-workman on 28th July, 1979 and remaining absent in un-authorised manner etc. etc. The enquiry was started on 20th September, 1979, but no workmen came present to attend the enquiry proceedings and no letters was received from them. On that the enquiry Officer can proceed *ex parte* in the absence of the concerned workmen, but he gave another opportunity to the concerned workman and fixed the enquiry proceedings for 15th October, 1979 as next date of hearing and the intimation was sent to them through registered A. D. Beside the publication in the local Hindi weekly in the Shere Haryana dated 23rd September, 1979 to 30th September, 1979. On 15th October, 1979 these workmen did not came to particepate in the enquiry before the Enquiry Officer, the respondent, management received the letter Ex. M-11 from these workmen for the change of the place of enquiry from Delhi to Faridabad and on this request of these workmen the enquiry venue was changed to Faridabad mill premises and the next date of enquiry was fixed for 10th November, 1979 at Mill premises, Faridabad. The letters to this effect were sent to the workman,—vide Ex. M-12/1 and postal receipt Ex. M-12/2. The workman gave their reply in respect of the charge-sheet,—vide Ex. M-13. On 10th November, 1979 the enquiry officer conducted the enquiry in the presence of these workmen, but as this enquiry was constituted against the five workmen jointly and other two workmen were not came present on that day so the enquiry proceedings were adjourned to 21st November, 1979. On the next date of hearing i.e. 21st November, 1979 these workmen came to participate in the enquiry proceedings, but they demanded that they should be allowed to be represented by Shri Hari Lal, President or Shri Banwari Lal, Secretary of the union. But the enquiry Officer dis-allowed their request because these two persons were not workers of the factory and they could not allow the outsider to be represented for the inside workmen and the outsider are not spose to follow the internal discipline of the company and this dis-allowance was according to the Certified Standing Orders of the factory and as per settled law. The representative of the respondent put before me the citation "Indian Factories Journal, Vol. XX-1961-62, page 424 in which the Supreme Court of India has held in the case Brooke Bond India Private Ltd., v/s. S.Subba Raman and another that a workman against whom an enquiry into alleged misconduct is being held by the employer has no right to be represented at such enquiry by a representative of his trade union, through the employer, in his discretion, may allow him to be so represented. Much less can such workman claim to be represented by counsel or by an outsider in such proceedings. An enquiry continued by the employer *ex parte* after the refusal of the workman to cooperate on the refusal of the employer to allow him to be represented by counsel or an outsider cannot therefore, be held to be unfair."

These workmen walked out from the enquiry proceedings on the condition that up till and unless they were not allowed the representation by the out-sider they would not participate in the enquiry. In these circumstances the enquiry officer was left with no other choice except to proceed *ex parte* and he did so. He further argued that the workmen did not point out any allegation on the enquiry officer in his claimstatement or in their statement

before the Court as WW-1. Rather they had admitted in their statement before the court that the enquiry officer was working in a fair manner but the representative of the respondent mis-behaved in the enquiry proceedings. They have not specifically alleged any demand rejected by the enquiry officer except the demand of representation from outsider which was rightly dis-allowed by the enquiry officer in the law. Without any objections on the enquiry officer or any specific allegation in the enquiry shows that the enquiry was proper and fair against these workmen. The enquiry officer proceeded *ex parte* according to Standing orders of the factory which are Ex. M-15 and submitted his findings report to the respondent on 15th February, 1980. The enquiry officer held guilty against the charges levelled against these workmen in the charge-sheet. The respondent management examined the report and findings of the enquiry officer. The respondent satisfied that the enquiry was conducted in a fair and proper manner, keeping in view the principles of natural justice, and findings of the enquiry based on the record before him. At the workmen were held guilty of grave and serious act of mis-conduct and they were dismissed from the service on 26th February, 1980. The order of dismissal is Ex. M-14. As the workman were not participated in the enquiry and were not coming in the factory, so the letter of termination were sent to them through registered post which are Ex. M-14/1, M-14/2 and M-14/3 on their permanent home address. The receipts of these letters are Ex. M-14/4, M-14/5, M-14/6. The action was taken according to the standing orders applicable in the Factory. The enquiry officer Shri K.K. Karoli has come in the court as witness of the respondent as MW-2 and he has stated before this Court about the whole proper and fair enquiry proceedings before him. He has stated in his statement that he sent the letters to the workmen for inviting to participate in the enquiry which is Ex. M-17 and M-17/1 is the postal receipt the same was received un-delivered which is Ex. M-17/2. He again sent the information,—*vide* Ex. M-18 the news paper and he also sent the letter Ex. M-19 to the manager of the factory to produce the workers to participate in the enquiry proceedings. He further stated that he send the information about the change of the venue of the enquiry,—*vide* Ex. M-20. The postal receipt of which is Exhibit M-20/1. He further stated that he wrote the enquiry proceedings which is Exhibit M-21 containing pages from 1 to 32 and got signed from the workmen on the date of hearing and prepared the findings of the enquiry proceedings which is Exhibit M-22. The representative of the respondent argued that in the cross-examination of this witness the representative of the workmen could not give any suggestion for his mis-conduct or unfairly conduct of the enquiry officer which shows that the enquiry was conducted in a fair manner under the principles of natural justice. He further argued that the workman in his statement denies the assault of their co-workmen and Security Officer, but admits that when they were coming out from the factory on 27th July, 1979 they hear that some Accident had taken place and Shri Lekh Ram and Security Officer Shri Udhey Ram received some serious injuries, which is a fact admitted by these workmen in indirect way. They admits that these two workmen received serious injuries, not by some assault but by some accident. He further argued that these workmen had alleged that they were terminated due to victimization for union activities, but they have not produced any evidence in this respect. They have not proved even that they were the members of the union. Simply saying that they were victimised due to union activities, did not prove this fact and representative of the respondent cited before me "Indian Factories and Labour Reports Vol. 6—1963, page 362 in the case between Bengal Bhardee Coal Co Ltd and Ram Probesh Singh and others, in which their Lordships have held that "the fact that the relations between an employer and the union were not happy and the workman concerned were office-bearers or active workers of the union would by itself be no evidence to prove victimization, for it that were so, it would mean that the office-bearers and active workers of a union with which the employer is not on good terms would have a carte blanche to commit any misconduct and get away with it on the grounds that relations between the employer and the union were not happy. Such finding of the industrial tribunal must be characterized as one based merely on conjectures and surmises".

The workman could not prove this fact because there was no reality in their allegation. They should have produced any other office bearer of this union to prove this fact which they withheld knowingly the facts. The enquiry was conducted in fair and proper manner. The enquiry officer could proceed *ex parte* even on the first date of hearing but the enquiry officer and the respondent sent so many letters through registered post and got publish the chargesheet and the date of enquiry in the SHERE HARYANA in the hindi weekly publication for making the enquiry fair and proper. The representative of the respondent cited the citation of Indian Factories and Labour Reports, Vol. 2-1961-page 184 in the case between Bata Shoe Co. (P) Ltd., and D.N. Ganguly and others, in which their Lordships of Supreme Court have held "that where charge-sheets sent to workmen returned unserved, the proper course for the company is to publish notice in some newspapers in the regional language in the absence of a provision in the Standing orders for their display in the notice-board, of the company, When that course is not adopted it must be held that the workman had no notice of the Charges against them and the date by which they had to submit their explanation and the date of enquiry. In this case the dismissal order cannot be upheld."

He further cited Labour Law Journal, Vol. 2, 1960-page 175 in the case between National Tobacco Company of India Ltd., and other and Fourth Industrial Tribunal and others in which his Lordship has held that after fair and proper domestic enquiry the Labour Court should not interfere with the findings arrived at such enquiry or the punishment by the employer". The domestic enquiry was according to the Certified Standing orders of the company and was fairly conducted by the enquiry officer and after going through the evidence the respondent had rightly and under the law terminated the services of the workman.

The representative of the workman argued on this issue that the workman joined the respondent factory on 1st October, 1975 and the workmen were active members of the workers union called as Bharat Carpet Karamchhari union and because they were active member so they were the straw in the eye of the management and the management had so many times threatened these workmen with dire consequences. As the workman were working for

the union and other workers of the factory and the other workmen of the factory wanted them to work, so they cannot leave the union activities. The management has a conspiracy in a collaboration with the rival union to eliminate these workmen so this workmen were stopped on the gate, on 28th July, 1979. The respondent had already terminate the office bearers of the union and in the same way they wanted to terminated the services of these workmen. The workmen did their duty on 27th July 1979 from 12.00 P.M. to 8.00 a.m. and when they were going out they heard about the accident with Shri Lekh Ram and Udey Ram, Security Officer. But when they came on duty on 28th July, 1979 they were stopped on the gate with assigning any reason. The workmen submitted their complaint to the management,—vide Ex. W-1 which they refused to take then these workmen sent the complaint to the Deputy Labour Commissioner, Faridabad which is Ex. W-2. The workman also gave complaint Ex. W-3 and copy of the same was sent to the Deputy Labour Commissioner, Faridabad they received the reply from the Deputy Labour Commissioner, Faridabad which is Ex. W-4 and according to that the workmen went to join their duty on the gate but they were denied. The workmen again sent the complaint which Ex. W-5 and the copy of the same was sent to the Deputy Labour Commissioner. The Deputy Labour Commissioner sent the reply which is Ex. W-6. The workmen also received Ex. W-7 from the Labour Inspector and on that base the Inspector took these workmen for duty on 3rd October, 1979 and they were given the duty on that day, but on 4th October, 1979 they were handed over to the police. The workmen received the charge sheet on 6th October, 1979 when they went to join the duty after releasing on bail. The charge sheet is Ex. W-8. The workmen replied the same,—vide Ex. W-9 which were sent through registered post. The postal receipt are Ex. W-10 to Ex. W-14. Then the workman received Ex. W-15 from the respondent that their enquiry was started on 10th November, 1979. The workman sent a letter Ex. W-16 to the respondent and on that day the enquiry was smoothly conducted. The workmen received the copies of the proceedings which are Ex. W-17. On the next date of hearing of the enquiry proceedings i.e. 21st November, 1979, the workmen gave a letter to the enquiry officer and the enquiry officer noted these things in the enquiry proceedings. On that day the representative of the respondent mis-behaved with the enquiry officer and torn out the enquiry proceedings on that day and he threatened the workmen and they got sited in the enquiry proceedings with the help of some Gundas and got signed on the enquiry proceedings and the workman were turned out from the enquiry proceeding. After this the workmen sent a complaint to the police which is Ex. W-18 and also sent the copies to the respondent which is Ex. W-19 to W-21. The receipts of this letter are Ex. W-22 to W-26. The workman did not participate after that date and the enquiry officer proceeded ex parte and wrote the proceedings according to their own way and no show cause notice was given to the workmen before termination. He further argued that the workman Shri Bhola Nath as stated the whole thing in his statement as WM-1. He has stated that the enquiry was not a fair and proper and it was for the victimization of the workmen for their union for their union activities and the termination order is illegal.

After hearing the arguments of both the parties, and carefully going through the file I am of view, that the domestic enquiry was fair and proper, because the workman have not raised any objection about the enquiry officer—in his claim statement or in his statement before me. The only thing in the enquiry which was disallowed by the enquiry officer was the representation of these workmen who were out-sider and dismissed employees of the respondent management which is admitted by the workmen himself in his cross examination that these workmen were dismissed employees of the factory. The other thing which is a very serious in this case is that of assault on the co-workman and the Security Officer by these workmen. Though these workmen had denied this fact but they have admitted in his statement as WW-1 that they hear the accident with these two persons. There is a medical report before me which shows the serious injuries on the bodies of these persons and there is a FIR shows the charges against these workmen. The representative of the workman did not argue on this point and there is no reply given by him on this point which shows that the allegation made by the respondent is correct and the enquiry was properly conducted by the enquiry officer by giving full opportunity to the workmen. The respondent got published the chargesheet and the date of enquiry in the hindi weekly SHERE HARYANA to give notice to the workmen and inspite of so many registered letters which is received un-delivered. The workman objected for the change of venue of the enquiry and participated in the enquiry on the first and second date of enquiry proceedings at Faridabad and they walked out when they were not allowed to be represented by the outsider. The respondent acted according to their Certified standing order, so the enquiry is proper and fair. So the issue is decided against the workmen and in favour of the respondent.

Issue No. 2 :—

After deciding the first issue in favour of the respondent which is discussed the roughly and the workmen were terminated after the fair and proper enquiry on a serious charges of mis-conduct and assault on the co-workman which is proved in the enquiry. The respondent had no other alternative except to terminate the services of the workman. So the respondent is justified in his order and the order is proper. The workman are not entitled to any relief. No order as to costs. This be read in answer to this reference.

Dated 4th January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 62. Dated 6th January, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Govt. Haryana, Labour & Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana.
Faridabad.

No. 9(1)82-6Lab. 414.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Sahni Silk Mills, 13/4, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR
COURT, HARYANA, FARIDABAD

Reference No. 477 of 1980

Between

SHRI SUGAN LAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.
SAHNI SILK MILLS, 13/4, MATHURA ROAD, FARIDABAD

Present:—

Shri Yoginder Singh, for the workman.
Shri B.R. Grover, for the respondent management.

AWARD

This reference No. 477 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/181-80/53086, dated 14th October, 1980, under section 10(i)(c) of the Industrial Disputes Act 1947, existing between Shri Sugan Lal, workman and the respondent management of M/s. Sahni Silk Mills, 13/4 Mathura Road, Faridabad. The terms of the references was :—

Whether the termination of services of Shri Sugan Lal was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, notices were sent to the parties. They appeared and filed their pleadings. According to the demand notice and claim statement, the case of the workman is that he joined the factory on 7th October, 1977 as operator at the rate of Rs. 248 salary per month. The respondent terminated the services on 1st February, 1979 on a allegation of theft. The respondent reported the matter to the police and FIR No. 513 dated 2nd December, 1978 with a false allegation which was proved by the verdict of the court dated 3rd April, 1980. The claimant was removed due to union activities and false case which was dis-approved by the court. So the workman may be reinstated with full back wages and continuity of service.

According to the written statement, the case of the respondent is that the workman was caught red handed while taking away the cloth of the Comnny in a search on the gate and the cloth was received from him and committed an act of theft in the month of November, 1979. The workman gave a statement and accepted his guilt in writing. That a case of theft was sent to the police which was decided by the Court and the workman is acquitted giving the benefit of doubt. So the termination order is proper and justified and the reference may be rejected.

On the pleading of the parties, the following issues were framed :—

1. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
2. Relief ?

My findings on issues is as under :—

Issue No. 1—

On this issues the representative of the respondent argued that on 29th November, 1978 at 8 P.M. when the workman was coming out of the factory with a 2 1/2 meter of linen cloth hidden with him. The gateman searched out the cloth and taken in his custody. Then the workman was taken to the Chief Security Officer where the workman

admits his guilt and wrote, Exhibit M/1 and got marked his thumb impression, the respondent lodged a complaint in the police under FIR No. 513, dated 2nd December, 1978 and the police challaned him under section 380 IPC. After this the respondent decided to struck off the name of the workman from the roll and so the respondent struck off his name from the roll from 1st December, 1978 as stated by MW-1 Shri Ram Nath Sharda, Chief Security Officer of the respondent, and the court acquitted him on the benefit of doubt and no honourably acquitted. The respondent terminated the services on 1st December, 1978 because in his view the case was proved beyond doubt and the respondent did not want to wait for the decision of the court. So the order of the respondent is proper and the justified. A thief could not kept as workman in the factory.

The workman's representative argued that the workman joined the services on 4th October, 1977 and worked upto 1st December, 1978. There was no complaint against the workman. The workman the active member of the union and the respondent did not want the workman to work in the union activities and they wanted to terminate the services of the workman so a false case of theft was concocted by the respondent to remove the services of the workman and they made the story to harass the workman in the court and otherwise. He argued that the workman is illiterate person who had marked thumb impression, which is also denied by the workman in his statement as WW-1. According to the story of the respondent, the workman was produced before the Chief Security Officer on same day and he got written, Exhibit M-1 but the date written by the Chief Security Officer is 30th November, 1978 on Exhibit M-1 at point "A" and the witness the Chief Security Officer Ram Nath Sharda has stated in his statement that when he came on 30th November, 1978 at 9.00 a.m. then the Duty Supervisor told him the story of theft. It is also supported by MW-2 Shri Fatwas Giri that the Chief Security Officer was not present at the time when the search was taken place from the workman. The respondent got the signatures of the workman, in the court which also did not tally with the thumb-impression on Ex. M-1. So the Exhibit M-1 is a fabricated documents. The workman had never admitted the guilt in the presence of the Chief Security Officer. It was all a false story. He further argued that the respondent should not have terminated the services of the workman so hastily as they did. According to the respondent the workman was caught red handed on 29th November, 1978 at 8.00 p.m. and his services were terminated on 1st December, 1978. They should have investigate the case properly. If there was any guilt. Because they want to remove the workman as early as possible so they did in haste and they removed the workman without giving any chargesheet or show cause notice which was mandatory on the part of the respondent. The judicial Court has rightly acquitted the workman, —vide order Exhibit W-1. The respondent could not put their case in the Judicial Court beyond doubt so the case was filed and the workman was acquitted. So after the acquittal of the workman from the Judicial Court, there is no allegation of theft on the workman and the workman is entitled for his reinstatement with full back wage and continuity of service.

After hearing the arguments from both the parties, and going through the file, I am of the view that the arguments put forward by the representative of the workman have some force. The document produced by the respondent Exhibit M-1 is not genuine document because the thumb impression on the document did not tally with the other thumb impression taken in the court. Moreover the respondent did not produce that document before the Judicial Court because there is no mention of such thing in the order of Judicial Magistrate. So the respondent has failed to prove the order of termination as justified and proper. So the workman is reinstated with full back wages and continuity of service.

Dated 1st January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 63, dated 6th January, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab./416. In Pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/S S.J. Knitting and Finishing Mills, Mathur Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT
HARYANA, FARIDABAD

Reference No. 49, 51, 52, 53, 68 of 1981

Between

Sarvshri Baleshwar Parshad, Hari Har Shah, Nandjeet Singh, Kamod Thakur and Mukand Lal, workmen
and the respondent management of M/S. S.J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad.

Shri G.S. Chaudhry, for the workman.
Shri B.R. Grover, for the respondent management.

AWARD

These references No. 49, 51, 52, 53, 68 of 1981 have been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/237/80/6478, dated 3rd February, 1981, ID/FD/237-80/6532, dated 3rd February, 1981, ID/FD/237-80/6526, dated 3rd February, 1981, ID/FD/237/80/6520, dated 3rd February, 1981 ID/FD/237-80/6700, dated 4th February, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947 existing between S/Shri Baleshwar Parshad, Hari Har Shah, Nandjeet Singh, Kamod Thukur, Mukand Lal, workmen and the respondent management of M/S. S.J. Knitting and Finishing Mills, 13/7, Mathura Road, Faridabad. The terms of the references were:—

Whether the termination of services of Sarvshri Baleshwar Parshad, Hari Har Shah, Nandjeet Singh, Kamod Thakur and Mukand Lal was justified and in order? If not, to what relief are they entitled?

On receiving these references, notices were sent to the parties. They appeared and filed their pleadings. According to the demand notice and claim statements, the case of the workmen are that they were appointed and terminated as under:—

Serial No.	Name of the workman	Date of joining	Date of termination	wages p.m.	Pos Held
				Rs.	
1	Shri Baleshwar Passhad	5-7-80.	10-8-80	285	Helper
2	Shri Hari Har Shah	7-9-76	10-8-80	390	Foreman
3	Shri Nandjeet Singh	7-2-77	10-8-80	310	Jigarman
4	Shri Kamod Thakur	16-8-76	10-8-80	475	Operator
5	Shri Mukand Lal	19-1-76	10-8-80	380	Do

The work of the workmen was quite satisfactory during their period and no charge sheet or letter of explanation was given to them. The workmen were active members of the union. and raised certain general demand of the workmen and thereafter the respondent management did not allowed them their duties and, stoped at the gave with malafide attention. The workman give demand notice to the respondent and the Concildation Officer on which the respondent taken the plea that their services were not terminated by the respondent and they are ready to take them on duty from the next date. The workmen reported on duty at the factory gate but the respondent refused to give duty and finally refused on 10th August, 1980 which is against the natural justice. So they are entitled for reinstatement with full back wages and continuity of service.

According to written statement, the case of the respondent is that the workmen never reported for duty at the gate. either before the service of the demand notice or otherwise. The workmen were chargesheeted for certain act or serious and grave mis-conduct for which domestic-enquiry is pending. Inspite of taking part in the enquiry the workmen started obsenting themselves without leave. The name of the workmen was never struck off from the roll of the company as alleged in the demand notice. They are still on the roll of the management. As the name of the workmen had never been struck off from the roll of the company till today, therefore, there is no existence of Industrial Disputes and the references are premature.

On the pleadings of the parties, the following issues were framed:—

1. Whether the reference is premature as the service of the workman never terminated by the management and the references are bad in law? If so to that effect? (OPM)
2. Whether the termination to services of the workmen is proper justified and in order? If not, to what relief are they entitled?

On the request of both the parties, the references, No. 49, 51, 52, 53, 68 of 1981 were consolidated on 2nd September, 1981 and it is also ordered that the evidence shall be recorded and read in reference No. 49 of 1981 of Shri Baleshwar Parshad. My findings issuewise is as under:—

Issue No. 1.—

Issue No. 1 is whether the references are premature? On this issue the representative of the respondent argued that it is premature as the name of the workman are still on the roll of the company. They are absenting from the factory without any intimation or leave. There are chargesheet of serious and grave misconduct against the workmen for which the domestic enquiry are pending and the workmen inspite of taking part in the enquiry started being absent from duty with any leave from the respondent. Ex. M-1 the copy of the attendance register is very clear in this respect. That they have marked absent from August, 1980 to July, 1981. The workmen raised the demand before the Conciliation Officer and on that demand notice the respondent put up his case before the conciliation officer and submitted his written reply for the demands which is Ex. M-2. In that written reply, the respondent had made clear that the demand notice is premature because the services of the workmen never terminated so far and the workmen are chargesheeted for certain serious and grave acts of mis-conduct for which the domestic enquiry is pending against them. Ex. M-3 is the Conciliation Proceedings before the Conciliation Officer. The respondent has taken the same plea before the Conciliation Officer, so the references are premature and bad in law.

The representative of the workman argued that the workmen were the active members of the union and they made a general demand notice of the workmen to the respondent and after this general demand notice the workmen were stopped at the gate. The workmen gave a demand notice to the management and the Conciliation Officer of the Circle. The Conciliation Officer settled the matter and the respondent agreed to give the duty on the next date. But when the workmen reached at the gate of the factory, they were not allowed to enter in the gate of the factory. The conciliation Officer was again approached with the demand notice and he could not settle the same at his own level so he sent his failure report to the government. He further argued that there is no reply with the respondent that why they have not strike off the name of the workmen, even after such a long time. It shows that the respondent want to harass the workmen in this way. Even under the Model Standing orders there is a provision that the respondent should struck off the name of the workmen after the absence of 10 days. But they have not struck off the name of the workman for such a long time, which shows the intention of the respondent, to keep the name on the roll and spoil the career of the workmen. They should have some decision in this respect which they have failed with alterial motives of the respondent. The respondent had mentioned in his reply before the conciliation officer and also in the written statement in the court that there are allegation of serious and grave mis-conduct against the workman on which chargesheet have been given to the workmen and domestic enquiry is pending against these workmen. But the respondent has failed to produce any copy of the chargesheet or any enquiry proceeding or any enquiry officer appointed by them for conducting these domestic enquiries against these workmen, which shows that there is no chargesheet and no enquiry is pending against these workmen and the allegation of the respondent for serious and grave mis-conduct against these workman is false. The respondent can come in the court with that chargesheets and give the evidence before this court on the charges against these workmen. Simply saying that there are chargesheets against the workmen and enquiry is pending does not prove all these facts. So it is wrong to say that there are something against these workmen. It is a new method adopted by the respondent not to give the duty to the workmen and they be restrained for legal action, which is no where in the Industrial Disputes Act or any other Act. So it is victimisation of the workmen and unfair labour practice of the respondent. It is termination and after the termination the references are quite mature.

After hearing the arguments of both the parties and going through the file, I am of the view that the arguments put forwarded by representative of the workmen have some force. The respondent should have produce the charge sheet against these workmen to shows the court the seriousness of the charges and if the domestic enquiry had been constituted by the respondent then the name of the enquiry officer or the enquiry officer should have brought as witness in this case. If the workmen did not come in the factory they can prove the charges against the workman in the court which the respondent has failed to do. So I hold that the references are not premature and bad in law. The references are in a proper form. So this issue is decided in favour of the workmen and against the respondent.

Issue No. 2.—

Issue No. 2 is as per reference?

After deciding issue No. 1 there is nothing remain to discuss this issue. The respondent did not put this issue for arguments. He simply argued that the respondent had not terminated the services of the workmen so the question of these references do not arise and the workmen are not entitled for any relief. But after discussing issue No. 1 at full length and going through the file I am of the view that the respondent had stopped the workman on the gate without any reason or notice. It is illegal on the part of the respondent and the workman are entitled for their reinstatement with full back wages and continuity of service.

This be read in answer to these references.

Dated 1st January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endstt. No. 65, dated 6th January, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)826-Lab./417.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/S V. P. Bhatia Electricals, 14/3, Mathur Road, Faridabad, .

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 129 of 1981

Between

SHRI JAGDISH PRASAD, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. V.P.
BHATIA ELECTRICALS, 14/3, MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bhandari, for the workman.

Shri R.C. Sharma, for the respondent management.

AWARD

This reference No. 135 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, — vide his order No. ID/FD55-81/16778,, dated 25th March, 1981, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between the workman Shri Jagdish Prasad, and the respondent management of M/S. V. P. Bhatia Electricals, 14/3, Mathura Road, Faridabad. The terms of the reference was:—

Whether the termination of services of Shri Jagdish Prasad was justified and in order? If not, to what relief is he entitled?

On receiving this reference, notices were issued to the parties and they appeared and filed their pleadings. According to the claim statement, the case of the workman is that he joined the respondent on 17th July, 1980 as helper on a salary of Rs. 200 per month. The respondent terminated the services of the workman on 1st January, 1981 without any notice and compensation. The workman is entitled for the reinstatement with continuity of service. According to the written statement, the case of the respondent is that the provisions of Industrial Disputes Act, are not applicable on the respondent as there was only two persons working including the claimant with the respondent. It is a small shop for electric fittings. The claimant was taken as learner at a salary of Rs. 200 per month. The respondent has closed his shop on 31st March, 1981 and no dispute continue against a closed concern. The workman found a better job and left his services of his own accord. So the demand notice is mis-conceived, and fabricated. The reference is bad in law.

On the pleadings of the parties, following issues were framed:—

1. Whether the management is covered under the shops and establishment and commercial Act ? If so to what effect?
2. Whether the workman left services of his own accord?
3. As per reference?
4. Relief?

My findings on issues wise is as under:—

Issue No. 1.—

Issue No. 1 is whether the management is covered under the shops establishment and commercial Act? If so to what effect?

On this issue the representative of the management argued that as stated by Shri V.P. Bhatia, MW-1, the respondent was only having a shop in front of Hawal, which was started in April, 1980 for electric fittings in the houses. It was a small shop where the respondent kept one or two persons as helper and made fitting work in the house, which is also corroborated by MW-2 Shri Kanhaya Lal, who has stated that the shop was in the front of Hawal which was doing the fitting work in the houses and which is also closed. The workman has not rebutted the plea of the respondent in any way. So it is established fact that the shop was covered under the Shops Establishment and Commercial Act and not Industrial Disputes Act. The representative of the workman put no arguments on this issue and the issue is decided in favour of the respondent and against the workman.

Issue No. 2:

On this issue the representative of the respondent referred the cross-examination of the workman as WW-1 where he has stated that he is working with M/s. R.K. Casting, Sector 25, Faridabad at a salary of Rs. 300 p.m. and further stated that he asked Shri Bhatia, proprietor to raise his salary from 200 which he refused, then he left the work and stated that he did not want anything except the remaining dues. The cross-examination of the workman is very clear for this issue that he learned the work of fitting with the respondent and then talked and concerned for higher pay and left the services of the respondent of his own accord and the workman admits that he is working at a salary of Rs. 300 p.m., then the plea of the respondent is very clear to prove without any other document or evidence.

The representative of the workman did not reply the arguments put by the representative of the respondent. So this issue is also decided in favour of the respondent and against the workman.

Issue No. 3:

The representative of the respondent argued that when the concerned respondent did not cover under the Industrial Disputes Act then the reference is bad in law, and the workman is employed on a higher pay as admitted by the workman himself as WW-1 in his cross examination. So there was no termination. After deciding issue No. 2 in favour of the respondent, the workman is not entitled to any relief. So this is also decided against the workman and in favour of the respondent. In view of my above discussion the reference is bad in law.

Dated the 4th January, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Indst. No. 67, dated the 6th January, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 82-61.ab/891. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s American Universal Electric (India) Ltd., Faridabad:

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 288 of 1980

between

SHRI DAYA SHANKAR, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S.
AMERICAN UNIVERSAL ELECTRIC (INDIA) LTD., FARIDABAD

Present:

Smt. Yoginder Singh, for the workman.

Shri R.N. Rati, for the respondent management.

AWARD

This reference No. 288 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID/FD/89-80/34867, dated 30th June, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Daya Shankar, workman and the respondent management of M/s. American Universal Electric (India) Ltd., Faridabad. The term of the reference was :—

Whether the termination of service of Shri Daya Shankar was justified and in order ? If no, to what relief is he entitled ?

On receiving this reference notices were sent to the parties. They appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined the respondent factory on 16th April, 1968 as Senior Assembler drawing Rs. 375 per mensem as wages. The work and conduct of the workman was quite satisfactory and there was no complaint against the workman. The workman was a paid member of the American Universal Electricals Karamchahi Union which was not liked by the respondent management. The management suspended the workman on 21st August, 1978 on an allegation that the workman instigated about 150 workmen on 17th August, 1978, for strike and indulgence in lawlessness. That the workman received the charge-sheet on 8th October, 1979 containing serious charges, which were denied by the workman. But the respondent conducted the domestic enquiry against the workman and the personnel officer was appointed as enquiry officer for this purpose and after this enquiry the respondent terminated the services on 23rd March, 1980 without giving him any show cause notice and a chance to explain his position which is against the rules of natural justice. The workman was not supplied the material on which the charges were framed so he could not get the proper opportunity in the enquiry. He was not given relevant material, list of prosecuting witnesses, examination of management witnesses and other reasonable opportunity was not given. So the workman may be reinstated with back wages and continuity of service.

According to written statement the case of the respondent is that it is not industrial dispute as the workman had not sent the demand notice to the management. It was given only to the Deputy Labour Commissioner, which became the subject matter of the conciliation proceedings and no dispute was raised with the respondent management. Hence no industrial dispute exist between the workman and the management. The workman was drawing Rs. 253 per month at the time of termination. He was suspended from duty for acts of misconduct alleged against him. He was given charge-sheet which was denied by the workman and enquiry was constituted by appointing the Personnel Officer as Enquiry Officer. In the enquiry the workman was granted number of adjournments at his request by the Enquiry Officer. Even after the workman staged walk out from the enquiry a number of times. The Enquiry Officer shows sufficient indulgence in adjourning the enquiry proceedings, after all the enquiry officer completed the enquiry *ex parte* and found him guilty of the charges of misconduct alleged against him and submitted the same to the respondent. There is no provision in the certified standing order of the company to give another show-cause notice before the termination the services of the employees. The respondent considered the enquiry report with the explanation of the workman and dismissed him on 23rd March, 1980. The workman was supplied the copies of the Certified Standing Orders of the company in Hindi on 8th November, 1979. The workman wanted to be represented by Shri Ram Briksh, who is dismissed employee of the factory and a outsider which was denied as per their own certified standing orders as there was no provision to allow the outsider in the enquiry proceedings. The Enquiry Officer held the proper enquiry taking into the consideration the rules of natural justice and every opportunity was given to the workman in the enquiry proceedings and after the domestic enquiry the workman was rightly terminated.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the workman raised the demand initially with the respondent management ? If so, to what effect ?
- (2) Whether the domestic enquiry held by the management is proper and justified and in order ?
- (3) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

According to the orders of my predecessor Issue No. 1 and 2 be treated as preliminary issues. My findings on the issues are as under :—

Issue No. 1 :

Issue No. 1 is whether the workman raised the demand initially with the respondent management. On this issue neither the respondent nor the workman representative argued and stressed before the court as this issue is decided in favour of the workman and against the respondent as the burden of providing this issue was with on respondent and they failed to prove this issue.

Issue No. 2 :

Issue No. 2 is whether the domestic enquiry held by the respondent is proper and justified ?

On this issue the representative of the respondent argued that the workman was employed in the factory as Assembler. There was no complaint against him except that he used to participate in the union activities of the factory which was not objected by the respondent as it was his right. On 17th August, 1978 the workman instigated the other workmen for strike and not to work and the workmen leads the workmen which were about 150—200, shouting slogans and beating the management staff Shri M. S. Hooda, Factory Manager and Ram Singh, Security Officer were injured and they gheraoed the Executive Vice-President of the factory and when he came out, he was beaten mercilessly and dragged down from the stairs. Shri B.S. Rana, Mr. V. Narayan and Mr. Puran Singh tried to save the Executive-Vice-President, they were also beaten up. They threw stones and broken window panes in the building. So he was suspended,—vide Ex. M-4 with other colleagues on 21st August, 1978. The respondent also informed the police in this respect, the police came at the spot and the criminal case was registered against the workmen and which is still pending in the court. The workman was given the charge sheet which is Ex. M-5, which was received by the workman and signed the same. The workman replied the charge-sheet,—vide Ex. M-6. The respondent appointed the enquiry officer. After considering the reply of the workman the enquiry of the workman was held, and the copy of the enquiry proceedings is Ex. M-7. The enquiry officer sent the letter to the workman for the participation in the enquiry which is Ex. M-2. There is correspondence between the enquiry officer and the workman which are Ex. M-8 to M-24. The enquiry officer made all efforts to give the full opportunity to the workman in the enquiry proceedings. The enquiry was started on 27th October, 1979 and concluded on 31st March, 1980. The workman participated in the enquiry proceedings but he walked out firstly on 29th November, 1980, secondly on 11th March, 1980 and finally on 21st March, 1980 from the enquiry proceedings without any reason. He argued that the statement of Shri P.C. Chaudhry, the enquiry officer in the domestic enquiry, who has come in the Court as witness MW-1 has cleared the position of the whole enquiry. The representative of the workman had not put any such suggestion on the enquiry officer that he was not given any opportunity to the workman, or any allegations on the enquiry officer during the enquiry proceedings. The statement and cross-examination of the witness shows that the workman or his representative in the court could not prove any allegation on the enquiry officer or about enquiry, which shows that the enquiry was held properly and fair according to the rules of natural justice. The charges against the workman were of very serious nature which are as under :—

- (1) Wilful absence from the place of duty,—vide clause 28 (35) of the Certified Standing Orders
- (2) Forming an unlawful assembly and inciting others to violence, threatening, physically beating the members of the management staff inside the company premises,—vide clause 28(28) of the Certified Standing Orders.
- (3) Riotous, disorderly and violent, behaviour and inciting others to violence,—vide Clause 28(7) of the Certified Standing Orders.
- (4) Assaulting Officers of the company inside the Factory,—vide clause 28(27) of the Certified Standing Orders.
- (5) Causing wilful damage to the property of the establishment,—vide clause 28(8) of the Certified Standing Orders.
- (6) Inciting, instigating other workmen to resort to illegal strike,—vide clause 28(21) of the Certified Standing orders.

He further, argued that the respondent had produced the copy of the Standing Orders in the file of this Court which is Ex. M-8 and which clears the whole allegations against the workman which are very serious according to Certified Standing Orders of the respondent. In the enquiry proceedings on 8th November, 1979 the workman demanded the copy of the Standing Orders which was given to him on the same day and he also demanded to allow Shri Ram Briksh as his representative in his proceedings which was not allowed according to their own Standing orders and discussed in the proceedings what he demanded before the enquiry officer. Even after this the workman did not come to attend on 15th November, 1979. The enquiry officer in spite of management's stress to proceed in enquiry adjourned the enquiry for the next date and informed the workman to attend the proceedings on 29th November, 1979. He further argued that the workman in his cross-examination had admitted all the pleas of the respondent. He had admitted as WW-1 that he absented himself on three occasions in the enquiry proceedings and he was given the copies of the proceedings on 21st March, 1980. He has also admitted signatures in enquiry proceedings. He has not stated any allegation in his statement on the enquiry officer or specifically stated about any allegation or any drawback in the enquiry proceedings. When he has no specific allegation in the demand notice or claim statement and the statement of the workman then how he can say that the opportunity was not given to the workman. The enquiry officer sent the enquiry proceedings through posts. When he came to attend the enquiry proceeding and always informed about the date of enquiry proceedings. In these circumstances, it is very clear that the domestic enquiry was fair and proper.

The representative of the workman argued that when the workman was facing the criminal proceedings on the same charges then there was no need of this domestic enquiry of the respondent. The respondent constituted the domestic enquiry with intention to terminate the workman at an early date. The charge-sheet was given after long time which is illegal. The Certified Standing orders of the company say that the charge-sheet should be given to the workman within week's time which was not complied by the respondent and it is illegal and against the natural justice. The conduct of the enquiry officer was not good towards the workman as stated by the workman in his statement as WW-1. He was also threatened by the Enquiry Officer in the enquiry proceedings. The workman was not allowed to assist him in the enquiry by any other workman due to all these behaviour of the enquiry

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officer. The enquiry officer should have allowed, the representative of the workman in the enquiry proceedings and denying this one aspect in the enquiry makes the enquiry illegal. There is a cutting and other over-writings in Ex.M-1 and W-1 which shows that there is a fabrication of document. The workman has produced Ex. W-1 to W-20, the correspondence between the respondent/Enquiry officer and workman. The respondent replied few letters and did not reply the whole correspondence of the workman which is admitted by the respondent-witness MW-1 which is also illegal on the part of the respondent. The workman was not supplied the list of witnesses of the management. The workman was not allowed to cross-examine the witnesses of the respondent in the enquiry proceedings, and no chance of defence witness was given to the workman. He further argued that the respondent wants to terminate the services of the workman as early as possible that is why they made the DRAMA of enquiry and terminated the services of the workman by not conducting the proper enquiry against the workman.

After this arguments of the representative of the workman the representative of the respondent argued that as regards the delay in charges-sheeting the workman is that there was a criminal proceedings against the workman and the respondent thought that it will be finished in the court at an early time, but when they thought that the proceedings in the criminal court take time, they gave the charge-sheet to the workman to hold the domestic enquiry which is not barred by any law, and in respect of the cross examination of respondent witnesses, the workman was given the chance. The copies of the proceedings were sent to the workman at his home address which the workman admits in his cross examination and he was asked to cross examine the respondent witnesses, but the workman refused to cross-examine the witnesses of the respondent and give his own defence and walked out from the proceedings on 19th March, 1980 and there was no alternative with the respondent except to proceed *ex parte* against the workman. He argued that even at the time of arguments the representative of the workman could not locate any allegation on the enquiry officer or any fault of the enquiry officer. So the enquiry was proper and fair.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the workman was given all opportunities in the enquiry proceedings and the workman did not avail the opportunity given by the enquiry officer during the course of enquiry proceedings. The enquiry officer adjourned the enquiry so many times, but the workman did not appear before him in the enquiry proceedings. The workman was supplied the required material according to Certified Standing Orders of the company and when there are serious allegations against the workman and there is a case pending in the criminal court against the workman, the enquiry officer reached proper conclusion in his report according to the conditions and circumstances before him. So I hold that the enquiry was proper and fair and this issue is decided in favour of the respondent and against the workman.

Issue No. 3 :

After deciding the preliminary issue in favour of the respondent, I think there is no need of discussing Issue No. 3 on merit. As the respondent held the proper and fair enquiry against the workman and he was found guilty of the charges against him in the enquiry and the charges are of very serious nature, which no industry can tolerate in these circumstances. So the workman is not entitled to any relief. The termination of services of the workman is justified and in order.

This be read in answer to this reference.

Dated the 1st January, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Endorsement No.64, dated the 6th January, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.